

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
KIRK A. SWANSON,

Plaintiff,

-against-

BATTERY PARK CITY AUTHORITY, and
SHARI HYMAN,

Defendants.
----- X

: No. 15 Civ. 06938
:
: **NOTICE OF MOTION TO**
: **DISMISS PURSUANT TO**
: **12 (B)(1) AND 12 (B)(6)**
:
:
: **(ORAL ARGUMENT**
: **REQUESTED)**

PLEASE TAKE NOTICE that at the United States Courthouse at 40 Foley Square, New York, New York, 10007, Courtroom 706, Defendants Battery Park City Authority and Shari Hyman, by their attorneys, Vandenberg & Feliu, LLP, will move this Court, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, for an Order dismissing the Plaintiff's Complaint ("Complaint"), as follows:

- (a) Count 1, asserting a retaliation claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000 et seq., should be dismissed for failure to adequately allege causation;
- (b) Count 2, asserting a retaliation claim under the New York City Human Rights Law, New York City Administrative Code § 8-107 et seq., should be dismissed for failure to adequately allege (i) causation, and (ii) that the alleged decision-maker had notice of his alleged protected activity;
- (c) Count 3, under the New York False Claims Act ("NYFCA"), New York State Finance Law § 187 et seq., should be dismissed for (i) failure to allege the existence of a "false claim" in violation of NYFCA, (ii) failure to allege that Plaintiff was engaged in protected activity under NYFCA, and (iii) failure to

allege that Plaintiff's conduct put Defendants on notice of a potential NYFCA claim;

- (d) In the event only Count 1 is dismissed, Counts 2 and 3 should be dismissed for lack of subject matter jurisdiction given the absence of federal question jurisdiction.

Dated: New York, New York
October 21, 2015

VANDENBERG & FELIU, LLP

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